

CHAPTER NO. 315

HOUSE BILL NO. 1661

By Representative Buck

Substituted for: Senate Bill No. 1932

By Mr. Speaker Wilder

AN ACT to amend Tennessee Code Annotated, Section 17-1-301; Section 17-4-102; Section 17-4-109; Section 17-4-114; Section 17-4-115; Section 17-4-116; Section 17-4-201 and Section 50-6-225; and to repeal Section 23 of Chapter 942 of the Public Acts of 1994, to refine and continue the Tennessee Plan.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 17-1-301, is amended by deleting subsections (a) and (b) and by substituting instead the following:

(a) If a vacancy occurs during the term of office of a judge of a circuit, chancery or criminal court, or any other state trial court of record, then the vacancy must be filled by the qualified voters of the judicial district at the next regular August election recurring more than thirty (30) days after the vacancy arises. In accordance with the provisions of §17-4-118, the Governor shall appoint a person to discharge the duties of such office until August 31 following such election.

(b) If a vacancy occurs during the term of office of a judge of the court of appeals or court of criminal appeals, then the vacancy must be filled in accordance with the provisions of Title 17, Chapter 4, from the grand division in which the vacancy occurs.

(c) If a vacancy occurs during the term of office of a Judge of the Supreme Court, then the vacancy must be filled in accordance with the provisions of Title 17, Chapter 4, and the requirements of Article VI, Section 2 of the Constitution of the State of Tennessee.

SECTION 2. Tennessee Code Annotated, Section 17-4-104(a), is amended by deleting the words "or any district attorney general or an employee of a district attorney general" and by substituting instead the following:

, any district attorney general or an employee of a district attorney general, or any district public defender or an employee of a district public defender

SECTION 3.

(a) Tennessee Code Annotated, Section 17-4-109(a), is amended by deleting subdivisions (1) and (2) and by substituting instead the following:

(1) If a vacancy occurs during the term of office of a judge of the court of appeals or court of criminal appeals, then the judicial selection commission shall, at the earliest practicable date, hold a public meeting in the grand division from which such vacancy is to be filled. However, if an incumbent judge fails to file a written declaration of candidacy required by §17-4-114 or §17-4-115, or if the commission is reliably

informed that a vacancy is impending for another reason, then the public meeting may be held prior to actual occurrence of the vacancy.

(2) If a vacancy occurs during the term of office of a Judge of the Supreme Court, then the judicial selection commission shall, at the earliest practicable date, hold a public meeting in Nashville. However, if an incumbent judge fails to file a written declaration of candidacy as required by §17-4-114 or §17-4-115, or if the commission is reliably informed that a vacancy is impending for another reason, then the public meeting may be held prior to actual occurrence of the vacancy.

(b) Tennessee Code Annotated, Section 17-4-109(e), is amended by adding the following sentence to the end of the subsection:

However, if an incumbent judge fails to file a written declaration of candidacy as required by §17-4-114 or §17-4-115, or if the commission is reliably informed that a vacancy is impending for another reason, then the commission may meet, select such persons and certify the names of such nominees to the Governor prior to actual receipt of written notice from the Governor that a vacancy has occurred.

SECTION 4. Tennessee Code Annotated, Section 17-4-114, is amended by deleting subsection (a) and by substituting instead the following:

(a)

(1) An incumbent appellate judge, who seeks election to fill the unexpired term of the office to which the incumbent judge was appointed, must qualify by filing with the State Election Commission a written declaration of candidacy to fill the unexpired term. The declaration must be filed not later than twelve o'clock noon (12:00) prevailing time on the first Thursday in February before the next regular August election occurring more than thirty (30) days after occurrence of the vacancy that was filled by the incumbent appellate judge. After timely filing such declaration, any request by the candidate to withdraw must be filed with the State Election Commission not later than twelve o'clock (12:00) noon prevailing time on the seventh day after the deadline for filing such declaration of candidacy.

(2) An incumbent appellate judge, who seeks election to fill the unexpired term of the office to which the incumbent judge was appointed but who was appointed after the first Thursday in February before the next regular August election occurring more than thirty (30) days after occurrence of the vacancy that was filled by the incumbent judge, must qualify by filing with the State Election Commission a written declaration of candidacy to fill the unexpired term. The declaration must be filed not later than the first Thursday occurring at least one full week after the appointment. After timely filing such declaration, any request by the candidate to withdraw must be filed with the State Election Commission not later than twelve o'clock (12:00) noon prevailing time on the seventh day after the deadline for filing such declaration of candidacy.

(3) The provisions of Title 2, Chapter 5, Part 1, do not apply to an election in which an incumbent appellate judge seeks election to fill the unexpired term of the office to which the incumbent judge was appointed, unless a contested election is required by §17-4-114(c).

SECTION 5. Tennessee Code Annotated, Section 17-4-114, is amended by designating the language of subsection (b) as subdivision "(b)(1)" and by inserting the following new language, to be designated as subdivision "(b)(2)":

(2) If the declaration of candidacy is not timely filed, then the judicial evaluation commission shall not include an evaluation or retention recommendation for the incumbent judge within the final report publicly disclosed pursuant to §17-4-201(c), and the judge's name shall not be submitted to the electorate.

SECTION 6. Tennessee Code Annotated, Section 17-4-114(c), is amended by deleting the first and second sentences and by substituting instead the following:

If the judicial evaluation commission makes a recommendation "against retention" of an incumbent appellate judge but the judge nevertheless files or has filed the declaration of candidacy required by subsection (a), then the provisions of subdivision (b)(1) shall not be applicable and the unexpired term shall be filled by means of a contested election. [Provided, however, if the judge's term of office is abbreviated because of death, resignation or removal after the filing of such declaration of candidacy but prior to the third Thursday in May preceding the regular August general election, then the vacancy shall be filled in accordance with the provisions of § 17-4-112, and no such contested election shall be held.] A political party may nominate a candidate and independent candidates may qualify under the general election law for the contested election which shall be the regular August election.

SECTION 7. Tennessee Code Annotated, Section 17-4-115, is amended by deleting subsection (a) and by substituting instead the following:

(a)

(1) An incumbent appellate judge, who seeks election or re-election for a full eight (8) year term, must qualify by filing with the State Election Commission a written declaration of candidacy. The declaration must be filed not later than twelve o'clock noon (12:00) prevailing time on the first Thursday in February immediately preceding the end of the term. After timely filing such declaration, any request by the candidate to withdraw must be filed with the State Election Commission not later than twelve o'clock (12:00) noon prevailing time on the seventh day after the deadline for filing such declaration of candidacy.

(2) An incumbent appellate judge, who seeks election for a full eight (8) year term but who was appointed to such office after the first Thursday in February before the next regular August election occurring more than thirty (30) days after occurrence of the vacancy that was filled by the incumbent appellate judge, must qualify by filing with the State Election Commission a written declaration of candidacy. The declaration must be filed not later than the first Thursday occurring at least one full week after the appointment. After timely filing such declaration, any request by the candidate to withdraw must be filed with the State Election Commission not later than twelve o'clock (12:00) noon prevailing time on the seventh day after the deadline for filing such declaration of candidacy.

(3) The provisions of Title 2, Chapter 5, Part 1, do not apply to an election in which an incumbent appellate judge seeks election or reelection for a full eight (8) year term, unless a contested election is required by §17-4-115(c).

SECTION 8. Tennessee Code Annotated, Section 17-4-115, is amended by designating the language of subsection (b) as subdivision "(b)(1)" and by inserting the following new language, to be designated as subdivision "(b)(2)":

(2) If the declaration of candidacy is not timely filed, then the judicial evaluation commission shall not include an evaluation or retention recommendation for the incumbent judge within the final report publicly disclosed pursuant to §17-4-201(c), and the judge's name shall not be submitted to the electorate.

SECTION 9. Tennessee Code Annotated, Section 17-4-115(c), is amended by deleting the first and second sentences and by substituting instead the following:

If the judicial evaluation commission makes a recommendation "against retention" of an incumbent appellate judge but the judge nevertheless files or has filed the declaration of candidacy required by subsection (a), then the provisions of subdivision (b)(1) shall not be applicable and the eight (8) year term shall be filled by means of a contested election. [Provided, however, if the judge's term of office is abbreviated because of death, resignation or removal after the filing of such declaration of candidacy but prior to the third Thursday in May preceding the regular August general election, then the vacancy shall be filled in accordance with the provisions of § 17-4-112, and no such contested election shall be held.] A political party may nominate a candidate and independent candidates may qualify under the general election law for the contested election which shall be the regular August election.

SECTION 10. Tennessee Code Annotated, Section 17-4-116(a), is amended by deleting the words and punctuation ", or if such judge after the qualifying date withdraws as a candidate," and by substituting instead the following:

, or if such judge withdraws as a candidate after receiving a recommendation "for retention" from the judicial evaluation commission and filing the required declaration of candidacy, then

SECTION 11. Tennessee Code Annotated, Section 17-4-201, is amended by deleting subsection (a) and by substituting instead the following:

(a)

(1) By rule, the Supreme Court shall establish a judicial evaluation program for appellate court judges. The purpose of the program shall be to assist the public in evaluating the performance of incumbent appellate court judges. The judicial evaluation commission, established pursuant to subsection (b), shall perform the required evaluations. The commission shall make a recommendation either "for retention" or "against retention" for each appellate court judge; provided, however, the commission shall not evaluate or make any retention recommendation with regard to any appellate judge whose term of office is abbreviated because of death, resignation or removal. Furthermore, the commission shall not include within the final report, publicly disclosed pursuant to subsection (c), an evaluation or retention recommendation

for any appellate judge whose term of office is abbreviated because of death, resignation or removal or who fails to timely file a declaration of candidacy as required by §17-4-114(a) or §17-4-115(a), unless the judge is a candidate for another office subject to evaluation under this section.

(2) If an incumbent appellate judge holds office for one (1) year or more preceding the deadline for filing the required declaration of candidacy for either an unexpired term or a full eight (8) year term, then evaluation procedures shall be based on the results of any evaluations performed throughout the judge's service on the appellate bench, evaluation surveys, personal information contained in an approved self-reporting form and such other comments and documents as the commission receives from any other reliable source. However, if an incumbent judge holds office for less than one (1) year preceding such deadline, then evaluation procedures shall be based on personal information contained in the self-reporting form, the judge's application to the judicial selection commission and such other comments and documents as the commission receives from any other reliable source.

(3) Information collected pursuant to subdivision (a)(2) shall be confidential and shall be publicly disclosed only in the manner permitted by subsection (c). Upon request, each member of the judicial evaluation commission shall enjoy complete access to any individual survey, form, application, comment and document submitted, conveyed or compiled for the purpose of judicial evaluation; however, each such member must protect the confidentiality of such information as well as the anonymity of survey respondents.

(4)

(A) At least thirty (30) days prior to the deadline for filing a declaration of candidacy, required by §17-4-114(a)(1) or §17-4-115(a)(1), the judicial evaluation commission shall provide an incumbent appellate judge with a draft of the commission's evaluation and shall provide the judge with a reasonable opportunity to comment or respond either personally or in writing.

(B) As soon as is reasonably practicable under the circumstances, but not less than three (3) days prior to the deadline for filing a declaration of candidacy, required by §17-4-114(a)(2) or §17-4-115(a)(2), the judicial evaluation commission shall provide an incumbent appellate judge with a draft of the commission's evaluation and shall provide the judge with a reasonable opportunity to comment or respond either personally or in writing.

SECTION 12. Tennessee Code Annotated, Section 17-4-201(b), is amended by inserting the following language as a new, appropriately designated subdivision:

() To stagger the terms of judicial evaluation commission members, beginning September 1, 1999, the four (4) nonlawyer members on the commission shall serve six (6) year transition terms; the four (4) state court judges on the commission shall serve four (4) year transition terms; and the four (4) lawyer members on the commission shall serve two (2) year transition terms. At the conclusion of the transition terms, each regular term of a commission member shall be six (6) years. A vacancy on the commission shall be filled in the

same manner as the original appointment for the remainder of the unexpired term.

SECTION 13. Tennessee Code Annotated, Section 17-4-201, is amended by deleting subsection (c) and by substituting instead the following:

(c) The judicial evaluation program shall require publication and disclosure of a final report. The final report shall not include any individual record or evaluation but may include, for each appellate judge, the individual final scores for the survey results. The final report shall be made available for public inspection on the first Thursday in March preceding the regular August election. On the first Sunday in July preceding the regular August election, the final report shall be published in a daily newspaper of general circulation in the Tri-Cities area, Knoxville, Chattanooga, Nashville, Jackson and Memphis. The final report for each appellate court judge may not exceed six hundred (600) words.

As soon as is reasonably practicable under the circumstances, in order to assist the citizenry in electing the best qualified persons to the appellate courts, the commission shall cause supplemental final reports to be published as may be necessitated by the filing of declarations of candidacy, required by §17-4-114(a)(2) or §17-4-115(a)(2).

SECTION 14. Tennessee Code Annotated, Section 17-4-201, is amended by deleting subsection (d).

SECTION 15. Section 23 of Chapter 942 of the Public Acts of 1994 is hereby repealed.

SECTION 16. If any provision of this act or of Chapter 942 of the Public Acts of 1994, as codified and amended, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. This act shall take effect July 1, 1999, the public welfare requiring it.

PASSED: May 20, 1999


JIMMY RAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 27th day of May 1999


DON SUNDQUIST, GOVERNOR